

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-238

April 7, 1998

PUBLIC UTILITIES COMMISSION
Utility Employee Transition
Benefits

ORDER COMMENCING
RULEMAKING

WELCH, Chairman; NUGENT AND HUNT, Commissioners

I. SUMMARY

In this Order, we initiate a rulemaking to establish the procedures investor-owned utilities will follow in offering employees transition benefits.

II. INTRODUCTION

In May 1997, the Maine Legislature decided that all Maine electricity customers will have the right to purchase generation service from competitive providers beginning March 1, 2000.¹ To promote an effective competitive market, the Legislature required each current investor-owned utility to divest most of its generation assets by that time. The changes in the industry structure and the divestitures of generation assets may cause current investor-owned utility employees to lose their jobs. The Legislature anticipated potential workforce reductions and included in the Act provisions requiring each investor-owned utility to develop a program to: (1) assist affected employees in maintaining fringe benefits and obtaining employment that makes use of their potential; (2) provide employees with retraining services and out-placement services and benefits for 2 years after the beginning of retail access; (3) provide full tuition for 2 years at the University of Maine or a vocational or technical school in the State, or equivalent retraining services; (4) provide continued, equivalent health care insurance for 2 years or until permanent replacement coverage is obtained through reemployment; and (5) provide severance pay equal to 2 weeks of base pay for each year of full-time employment. 35-A M.R.S.A. § 3216.

¹ "An Act to Restructure the State's Electric Industry." P.L. 1997, Ch. 316 (Act), codified as Chapter 32 of Title 35-A (35-A M.R.S.A. §§ 3202-3217).

The Commission must adopt rules to implement the statutory requirements. In addition, the Commission must set certain deadlines relating to eligibility for benefits and allocate the "reasonable accrual increment cost" of the services and benefits to ratepayers through charges collected by the transmission and distribution (T&D) utility. 35-A M.R.S.A. § 3216(6).

II. BACKGROUND

Prior to developing the proposed rule, we conducted an inquiry in Docket No. 97-585 into many of the issues we anticipated would arise in this rulemaking.² We received comments from the Office of the Public Advocate (OPA), Maine Public Service Company (MPS), and Central Maine Power Company (CMP). The comments were constructive and helped us develop the proposed rule.

III. GENERAL POLICY CONSIDERATIONS

All three commenters generally agreed that the Legislature contemplated limited involvement by the Commission with the employee transition benefit plans. Indeed, section 3216 does not provide a review procedure, standard of review, or approval requirement with respect to the utilities' filing of benefit plans. Further, the statute appears to specify all of the necessary components for the transition benefits plans. Finally, all commenters agreed that the Commission's expertise clearly lies in economic regulation and not regulation of labor relations between utilities and their employees.

While cognizant of its limited role, both the Commission and the commenters also recognize that the Commission must ensure that the spirit and intent of the statute is met. Specifically, while the statute provides no express review mechanism, it is clear that the Legislature contemplated some level of review when it required the utilities to file the plans with the Commission. If the Commission is required to review the plans, it must apply some general standard in evaluating whether the plans meet the statute's minimum requirements; the proposed rule includes such a standard.

² Inquiries are conducted pursuant to the Commission's Rules, Ch. 110, Part 12.

IV. DISCUSSION OF INDIVIDUAL SECTIONS

Section 1: General Provisions and Definitions

Subsection 1.A sets forth the scope of the rule. Subsection 1.B contains the definitions of key terms used in the proposed rule. Some of the definitions are included in the statute and are included in the proposed rule for convenience. Other definitions, however, impact the application of this rule and thus warrant further explanation.

First, Subsection 1.B(2) of the proposed rule defines an "eligible employee," in part, as one who is laid off by either the investor-owned utility or the new owners of the divested generation assets. Both MPS and CMP supported coverage of employees of the new owners who are laid off due to retail competition. OPA, however, believes that it was not the intent of the Legislature that the T&D utility "act as the guarantor of transition benefits for its former employees who chose -- voluntarily -- to leave the utility for another job -- presumably more attractive -- with an unregulated entity." The Commission notes, however, that it is far more likely that employees of the investor-owned utility will have little choice regarding employment with the new owner. Quite simply, the employees will likely be required to take the new job (which may or may not be more attractive than their previous job) or face unemployment. If these employees are then laid-off by the new owners due to retail competition, they should also receive transition benefits. Thus, the proposed rule will cover employees laid off by both the investor-owned utility and the new owners.

Subsections 1.B(3),(5) define health and fringe benefits. The OPA recommended that the Commission establish specific definitions for these terms while MPS and CMP encouraged the Commission to let each utility define the terms in their respective plans. Both MPS and CMP noted, however, that the benefits should be the same benefits provided to the employees prior to termination. The proposed rule does not specify every possible type of benefit covered but does require the plan to offer the same benefits as provided to the employees prior to their termination.

Finally, Subsection 1.B(7) defines the phrase "reasonable accrual increment cost" to be the costs of the employee transition plan, over-and-above currently provided benefit costs. The commenters varied greatly on their suggested definition of this phrase. CMP argued that because the transition benefits are not normally available to employees and therefore not already included in rates, the phrase should be defined as "the costs of

the transition benefits programs." OPA proposed that the phrase be defined as, "the incremental costs of the utility's transition benefit program over and above currently-provided benefit costs." MPS defined the phrase as, "the but-for costs of the Legislation These costs include not only the statutory benefits in excess of the utility's contractual benefits, but also the actual terminations caused by retail access, neither of which are being currently collected in rates." The Commission notes that the costs of health and fringe benefits currently offered to employees are currently included in rates. Accordingly, the proposed rule provides for the allocation of only those costs over and above currently provided benefit costs.

Section 2: Periods of Eligibility

Section 2 provides that, absent just cause, any layoff which occurs between the effective date of the Rule and December 31, 2001, will be deemed to be due to retail competition. Section 3216 provides that, absent just cause, all layoffs that occur after March 1, 2000, will be "deemed" to have been "due to" retail competition. 35-A M.R.S.A. § 3216(b). It also requires the Commission to establish an end date of automatic eligibility. The statute also appears to contemplate that employees terminated between January 1, 1998, and March 1, 2000, are eligible for benefits if the layoff is "due to" retail competition. The proposed rule reflects a belief that utilities will begin to reorganize their workforces in anticipation of divestiture and retail access before those actual events occur. Given the statute's clear intent to provide benefits to employees laid-off as a result of workforce reorganization due to restructuring of the electric industry and the fact that each of the major investor-owned utilities are all moving towards early divestitures, it seems reasonable to begin the eligibility on the effective date of the Rule.

Section 3: Scope of Benefits

Subsection 3.A(1) lists the specific benefits which must be included in an investor-owned electric utility's plan. The proposed rule mirrors the statute, adding no additional benefit requirements to the rule. Subsection 3.B provides that other discretionary benefits, such as early retirement benefits, may be included in the plan; the utility, however, will have to justify the recovery of the costs of any such benefits in rates.

Section 4: Commission Review of Plans

Subsection 4.A(1) mirrors the statute and requires a utility to inform its employees and their certified representatives of the provisions of the plan prior to filing with the Commission.

Subsection 4.A(2) addresses when utilities must file their plans. The statute requires a utility to file its transition benefits plan prior to finalizing any transaction that would result in an eligible employee being laid off or 90 days prior to retail access, whichever comes first. 35-A M.R.S.A. § 3216(3). Given the requirement in Section 3 that eligibility begin on the effective date of the Rule and the fact that many of the utilities are moving toward early divestiture, the proposed rule requires each utility to file its plan within 60 days of the effective date of the Rule.

Subsection 4.B(1) provides that upon receipt of a proposed plan, the Commission will provide interested persons with a 30-day period to file comments regarding whether the plan meets the requirements of section 3216 and the rule.

Subsection 4.B(2) sets forth the scope of the Commission's substantive review of the plan. As noted earlier, all of the parties agreed that the scope of the Commission's review should be minimal. The proposed rule limits the Commission's review to a determination of whether the plan is consistent with section 3216 and the Rule. If the plan is inconsistent with section 3216 it will be rejected, and the utility will be required to refile the plan after it makes the necessary changes.

Subsection 4.B(2)(b) addresses the treatment of plans which contain benefits in excess of the statutory requirements. Any such plan will be accepted on the condition that the costs of any non-mandatory benefits will not be considered under 35-A M.R.S.A. § 3216(5) but instead determined in an appropriate rate-making proceeding under applicable ratemaking principles.

Subsection 4.B(3) addresses the Commission's continued oversight once a plan is accepted. Both CMP and MPS commented that the Commission should have limited continued involvement with the plan, while OPA argued that the utility should be required to report every six months on all activities associated with the plan. The proposed rule provides that after the Commission accepts a utility's proposed plan, any disagreements arising under the terms of the agreement will be addressed through labor-relations dispute-resolution forums.

Subsection 4.C addresses the statute's requirement that notice of layoffs be filed with the Commission. Paragraph 4.(C)(1) requires that while the plan is in effect, the utility must provide the Commission at least 60 days prior notice of any closure, relocation, reorganization or other action that will result in layoffs. Paragraph 4.(C)(2) requires the new owner, as a condition of the approval of the divestiture, to provide the utility with notice of any closure, relocation, reorganization or other action which will result in layoffs of former employees at least 75 days prior to the event. Finally, Paragraph 4.(C)(3) lists the specific information which must be included in the notice.

Section 5: Cost Recovery

Section 5 describes how investor-owned utilities will recover the costs of the benefits required by the statute. Subsection 5.A mirrors the statute's requirement that the Commission allocate the "reasonable accrual incremental cost of the services and benefits" (as defined in section 1) of this program to ratepayers through charges collected by the transmission and distribution utility. 35-A M.R.S.A. § 3216(5). Subsection 5.B proposes that determining the reasonable costs will take place during an appropriate ratemaking proceeding [probably the investigation of stranded costs, transmission and distribution utility revenue requirements and rate design cases filed at the Commission] the details of that recovery will be determined in the specific proceeding.

Subsection 5.C provides that the recoverable costs of the employee transition benefits program will be reflected in rates prior to the implementation of electric restructuring on March 1, 2000.

Subsection 5.D provides that both the costs and the revenues collected which relate to the employee transition benefits will be accounted for by the benefits administrator. The costs and collections must be recorded in separately identifiable accounts so that they can be reported to the Commission, if requested.

Section 6: Collective Bargaining

Section 6 mirrors verbatim the statute's requirements relating to collective bargaining issues.

Section 7: Waiver

Section 7 allows the Commission to waive any of the requirements of the Rule if good cause is shown and to subsequently rescind, alter or amend any waiver.

V. PROCEDURES FOR THIS RULEMAKING

This Rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. Written comments on the proposed rule may be filed with the Administrative Director no later than **May 15, 1998**. (Please refer to the docket number of this proceeding, Docket No. 98-238 when submitting comments.)

No public hearing on this matter is presently scheduled, but one will be held if requested by any five interested persons. Persons wishing to request a public hearing on this rule must notify the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, on or before **May 1, 1998**.

VI. FISCAL AND ECONOMIC EFFECTS

The Commission expects the fiscal impact of this Rule to be minimal. However, we invite all interested parties to comment on the fiscal impact and all other implications of this proposed rule.

VII. SERVICE

The Administrative Director shall send copies of this Order and the attached rule to:

1. All electric utilities in the State as well as the labor unions/collective bargaining agents representing their employees;
2. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;
3. All person listed on the Commission's list of person who wish to receive notice of all electric restructuring proceedings;
4. All person listed on the service list or who filed comments in the Inquiry, *Public Utilities Commission Inquiry into Utility Employee Transition Services and Benefits*, Docket No. 97-585;

5. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

6. Executive Director of the Legislative Council, state House Station 115, Augusta, Maine 04333 (20 copies).

Accordingly, we

O R D E R

1. That the Administrative Director send copies of this Order and the attached proposed rule to all the persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed Rule;
2. That the Administrative Director send a copy this Order to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053; and
3. That this Order will also be posted on the Commission's website, <http://www.state.me.us/mpuc>.

Dated at Augusta, this 7th day of April, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt